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E.O. 11652: GDS

TAGS: PLOS PFOR MASS EC

SUBJECT: FMS AND THE FISHING DISPUTE

1. SUMMARY: WITH THE SUCCESSFUL EXPLORATORY LOS DISCUSSIONS
IN QUITO AND THE RELEASE OF THE LAST OF THE SEVEN SEIZED
US FISHING BOATS, EMBASSY BELIEVES WE SHOULD NOW PROCEED TO
REVIEW THE STATUS OF FMS PROGRAMS IN ECUADOR,
HOW THEY ARE AFFECTED BY THE SEIZURES, WHAT THEIR EFFECT IS
ON THE OVERALL BALANCE OF OUR BILATERAL RELATIONSHIPS, AND
WHERE WE SHOULD GO FROM HERE. A RECENT SERIES OF ACTIONS
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THE US HAS TAKEN, WHICH ADVERSELY AFFECT ECUADOR, HAVE LEFT
US WITH LITTLE LEVERAGE OTHER THAN FMS AND MAP TRAINING IN
TRYING TO MAINTAIN A FAVORABLE RELATIONSHIP. FMS AND MAP
TRAINING, THEN, REMAIN THE KEY INDUCEMENTS TO THE GOE TO

ACCOMMODATE OUR LOS COMPROMISE PROPOSAL, AND THE ONLY REAL CARROT TO RESOLVE THE FISHING DISPUTE. TO SUSPEND FMS ONCE AGAIN WOULD, WE BELIEVE, LEAD THE ECUADOREAN ARMED FORCES (AND THEREFORE THE GOE) TO DISCARD THE US AS A RELIABLE SOURCE OF MILITARY ASSISTANCE, SEVERELY DIMINISH OUR POLITICAL LEVERAGE HERE, AND DISSOLVE REMAINING INCENTIVES FOR THE GOE TO REACH AGREEMENT ON OTHER ISSUES OF INTEREST TO US. EMBASSY RECOMMENDS THAT LEGISLATIVE SANCTIONS PROVISIONS AGAINST FMS BE WAIVED. END SUMMARY.

2. THE SEVEN US FISHING BOATS THAT WERE SEIZED BEGINNING JANUARY 25TH, 1975, BROUGHT THE US ONCE AGAIN INTO CONFLICT WITH ECUADOR'S DETERMINATION TO ENFORCE ITS CLAIMED 200-MILE JURISDICTION. IT ALSO BROUGHT INTO EFFECT CERTAIN US LEGISLATION ENACTED TO RETALIATE AGAINST COUNTRIES WHICH DO NOT ALLOW OUR FISHING VESSELS FREE ACCESS TO RESOURCES BEYOND THE 12-MILE LIMIT WE RECOGNIZE. THE PRINCIPAL RETALIATORY MEASURES ARE CONTAINED IN THE FISHERMEN'S PROTECTIVE ACT (FPA), FOREIGN ASSISTANCE ACT (FAA), AND FOREIGN MILITARY SALES ACT (FMS), THE LATTER REQUIRING HALTING FOREIGN MILITARY SALES AND CREDITS IN THE EVENT OF SEIZURES.

3. THE FPA, SECTION 620(0) OF THE FAA, AND SECTION 3B OF THE FMS ACT, WERE ENACTED TO PROTECT THE RIGHTS OF US FISHERMEN, HOPEFULLY SERVING AS A DETERRENT AGAINST SEIZURES BY COUNTRIES CLAIMING 200 MILES. THERE IS NO EVIDENCE, HOWEVER, THE ECUADOR HAS BEEN DETERRED FROM ENFORCING ITS LAWS, AND THE NET EFFECT OF OUR LEGISLATION HAS BEEN TO ENCOURAGE (AND IN THE CASE OF THE REIMBURSEMENT PROCEDURES OF THE FPA, TO SUBSIDIZE) CONFLICT BETWEEN OUR FISHERMEN AND ECUADOR. THE LEGISLATION CLEARLY IS NO LONGER ADEQUATE FOR THE PURPOSES IT WAS INTENDED TO SERVE, INDEED IF IT EVER WAS. WHAT IT HAS DONE IS WEAKEN THE FABRIC OF OUR RELATIONSHIP WITH ECUADOR AND SPILL-OVER TO AFFECT OTHER US POLICIES AND OBJECTIVES IN LATIN AMERICA.

4. THE LEGISLATION HAS IN FACT MADE IT THAT MUCH MORE
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DIFFICULT TO NEGOTIATE A SETTLEMENT FOR THE VERY REASONS NOTED IN THE PRESIDENT'S FOREIGN POLICY MESSAGE TO THE CONGRESS IN 1973: "I URGE THE CONGRESS TO TAKE A NEW AND THOROUGH LOOK AT EXISTING LEGISLATION THAT AFFECTS OUR RELATIONS WITH LATIN AMERICA. WE NEED TO STUDY, FOR EXAMPLE, WHETHER VARIOUS LEGISLATIVE RESTRICTIONS SERVE THE PURPOSES FOR WHICH THEY WERE DESIGNED. DO THEY DETER OTHER GOVERNMENTS FROM VARIOUS ACTIONS, SUCH AS SEIZING FISHING BOATS? OR DO THEY MERELY MAKE THE SOLUTION OF SUCH PROBLEMS MORE DIFFICULT? I BELIEVE SOME CURRENT RESTRICTIONS ARE ENTIRELY TOO RIGID AND DEPRIVE US OF THE FLEXIBILITY WE NEED TO WORK OUT MUTUALLY BENEFICIAL SOLUTIONS." AS SECRETARY KISSINGER SAID IN HIS HOUSTON SPEECH OF MARCH 1, 1975, "EXPERIENCE HAS

DEMONSTRATED THAT AUTOMATIC SANCTIONS...ARE ALMOST ALWAYS HARMFUL. AUTOMATIC SANCTIONS ALLOW NO TACTICAL FLEXIBILITY. THEY PRESENT OTHER GOVERNMENTS WITH A PUBLIC ULTIMATUM; BY SEEMING TO CHALLENGE THE RECIPIENT'S SOVEREIGNTY, THEY HARDEN POSITIONS, ENCUMBER DIPLOMACY, AND POISON THE ENTIRE RELATIONSHIP."

5. WHAT CAN BE DONE TO RESOLVE THE SPECIFIC DISPUTE WITH ECUADOR AND RESTORE THE BASICALLY HEALTHY RELATIONSHIP WE HAVE ENJOYED WITH THIS COUNTRY? STRIPPED OF RHETORIC, THE US AND ECUADOR MAY BE SUBSTANTIALLY CLOSER IN THEIR VIEWS ON LOS AND FISH THAN MAY SEEM APPARENT. THE ECUADOREANS KNOW THAT WE ARE PREPARED TO ACCEPT A 200-MILE ECONOMIC RESOURCE ZONE AS PART OF A FAVORABLE LOS OUTCOME. THE ECUADOREANS ALSO ARE COMING TO REALIZE THAT THEY ARE RELATIVELY ISOLATED IN THEIR PUBLIC CLAIM TO COMPLETE SOVEREIGNTY OVER 200 MILES. THEY HAVE PRIVATELY TOLD US THAT THEY UNDERSTAND OUR NEED FOR AN AGREEMENT WHICH PRESERVES FREEDOM OF TRANSIT AND A SPECIAL REGIME FOR STRAITS--OUR TWO MOST IMPORTANT REQUIREMENT--AND QUITE FRANKLY ADMIT THAT THEIR REAL INTEREST IS RESOURCES AND NOT RPT NOT IMPEDING FREEDOM OF NAVIGATION. THE KEY TO OUR LOS PROBLEMS WITH ECUADOR THEREFORE LIES IN A SOLUTION TO THE FISHING DISPUTE, A SOLUTION WHICH WE HAVE INDICATED WE ARE PREPARED TO TRY TO WORK OUT. A BREAKTHROUGH IN REACHING AGREEMENT WITH ECUADOR WOULD, OF COURSE, HAVE AN IMPORTANT EFFECT UPON OTHER NATIONS WHICH HAVE ADOPTED SIMILAR POSITIONS BUT PERHAPS PREFERRED TO LET THE
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ECUADOREANS FIGHT THEIR BATTLES FOR THEM.

6. ENTER FMS. THE GAINS THE US HAD MADE HERE IN THE LAST YEAR AND A HALF IN HEALING THE EARLIER BREACH STEMMED, IN LARGE MEASURE, FROM OUR UNILATERAL ACT OF LIFTING THE FMS SANCTION AND RESUMING THE SUPPLY AND TRAINING RELATIONSHIP IN FEBRUARY, 1974. THE BENEFICIAL EFFECT WAS DUE IN PART TO THE FACT THAT THIS IS A MILITARY GOVERNMENT WHICH BADLY WANTED TO REHABILITATE ITS ARMED FORCES, IN PART BECAUSE THE GOVERNMENT PERCEIVED THE NEED TO ENHANCE ITS DEFENSIVE POSTURE VIS-A-VIS AN INCREASINGLY ERRATIC PERU. BUT THE IMPORTANCE OF FMS TO RESOLUTION OF OUR LOS/FISHING PROBLEMS IS EVEN MORE IMPORTANT. THE ECUADOREAN NAVY IS IN CHARGE OF ECUADOREAN NATURAL RESOURCES POLICY GENERALLY, AND FISHING POLICY SPECIFICALLY. IT HAS THE MOST IMPORTANT INTEREST IN ECUADOR'S LOS POSITION; ECUADOR'S NEGOTIATION POSTURE REQUIRES NAVY CONCURRENCE. AND IT IS THE ECUADOREAN NAVY WHICH IS IN THE SADDEST STATE OF READINESS OF THE THREE SERVICES, AND THUS MOST INTERESTED IN FMS/MAP PROGRAMS AS A MEANS OF REBUILDING ITSELF.

7. IT IS IMPORTANT TO NOTE THAT FMS PROGRAMS WILL NOT

ENABLE THE ECUADOREAN NAVY TO SCOUR THE SEAS FOR US FISHING VESSELS--IT ALREADY HAS A MORE THAN ADEQUATE CAPABILITY TO DO THAT, AS WITNESSED BY WHAT HAS ALREADY TAKEN PLACE. IT HAS ADEQUATE SPOTTER AIRPLANES AND FAST PATROL CRAFT FOR COASTAL SURVEILLANCE AND INTERDICTION WITH RESPECT TO FISHING VESSELS. NOT PROVIDING ECUADOR A DESTROYER OR SELLING IT OTHER EQUIPMENT WILL NOT HINDER ITS ABILITY TO SEIZE US SHIPS; WHAT IT WILL DO IS SLOW THE MODERNIZATION OF THE ECUADOREAN NAVY UNTIL EQUIPMENT CAN BE DELIVERED FROM OTHER COUNTRIES AND REMOVE ANY PRESENT INCENTIVE IT MIGHT HAVE TO REACH A SOLUTION TO THE FISHING DISPUTE. HALTING FMS WILL NOT ONLY COMPROMISE OUR EFFORTS TO GET ECUADOR TO AGREE WITH SOME OF OUR LOS AND OTHER OBJECTIVES; IT WILL ALSO PROVOKE RENEWED CRIES OF "US THREATS AND COERCION". AND WE HAVE ALREADY SEEN HOW EFFECTIVE A "SPOILER" THIS COUNTRY CAN BE ON SUCH AN ISSUE IN OUR CURRENT EXPERIENCES WITH THE TRADE REFORM ACT.

8. HAVING TERMINATED GRANT ECONOMIC ASSISTANCE, VOTED
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AGAINST SOFT LOANS IN INTERNATIONAL LENDING INSTITUTIONS, SIGNED LEGISLATION WHICH (UNTIL IT IS REMEDIED) DENIES ECUADOR GENERALIZED TARIFF PREFERENCES, SEEN SEVEN US FISHING VESSELS SEIZED, AND A BOYCOTT OF ECUADOREAN PRODUCTS AND SHIPPING THREATENED, THERE ARE VERY FEW LEVERS WE HAVE LEFT IN OUR RELATIONSHIP. THE ECUADOREANS RECOGNIZE THE PROBLEMS THEIR SEIZURE OF US FISHING VESSELS HAVE CAUSED, AND HAVE BEEN AT PAINS TO EMPHASIZE THAT THE SEIZURES STEM SOLELY FROM THEIR DETERMINATION TO ENFORCE THEIR LAWS--NOT FROM ANY DESIRE TO ALTER THEIR BASIC POLITICAL RELATIONSHIP WITH US. THEY HAVE SPECIFICALLY REFRAINED FROM USING THE CURRENT FMS "REVIEW" AS A POLITICAL FOOTBALL BY CHARGING "COERCION" OF "THREATS".

9. IN OUR VIEW STRONG REASONS EXIST FOR CONTINUATION OF FMS AND THEY CAN BE DEFENDED. FMS SERVES AS A BARGAINING CHIP IN REACHING AN OVERALL SETTLEMENT IN THE LOS CONFERENCE. PROVIDED WE COME UP WITH SOME SHIPS, IT GIVES US LEVERAGE WITH THE ECUADOREAN NAVY, WHICH ADMINISTERS AND INFLUENCES ENERGY AND FISHING POLICY. REPEAL OF THE FISHING SANCTIONS PROVISIONS OF THE FISHERMAN'S PROTECTIVE ACT, THE FOREIGN ASSISTANCE ACT, THE FOREIGN MILITARY SALES ACT, AND THE NAVY SHIP LOAN ACT PRESUMABLY WILL BE CONTINGENT UPON FINAL APPROVAL BY THE CONGRESS OF WHATEVER EMERGES FROM THE LOS CONFERENCE. BUT IN THE MEANTIME, WE BELIEVE THAT US POLICY TOWARD ECUADOR CAN AND SHOULD BE BASED UPON OUR BROADER INTERESTS HERE, AND SHOULD NOT BE CONDUCTED SOLELY IN REACTION TO AN ECUADOREAN FISHERIES POLICY THAT WE CANNOT AFFECT. MOREOVER, IT IS CONSISTENT WITH THE OBJECTIVE ENUNCIATED IN NSC/IG-ARA POLICY MEMORANDUM #1, "MAINTAINING CONSTRUCTIVE RELATIONSHIPS WITH LATIN

AMERICAN GOVERNMENTS" BY "CONTINUING A SUPPLIER RELATIONSHIP" WITH LATIN AMERICAN MILITARY ESTABLISHMENTS IN ORDER TO SERVE POLITICAL AND, TO A LESSER EXTENT, SECURITY AND CERTAIN ECONOMIC/COMMERCIAL INTERESTS."

10. RECOMMENDATION: THE JUSTIFICATION FOR A WAIVER OF FMS SANCTIONS ON GROUNDS OF NATIONAL INTERESTS, AS EXPRESSED IN THE ACTING SECRETARY'S MEMORANDUM TO THE PRESIDENT ON DECEMBER 10, 1973, IS AS VALID TODAY AS 15 MONTHS AGO. IF A WAIVER IS BELIEVED TO BE NECESSARY TO CONFIDENTIAL

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ENABLE FMS TO PROCEED, IT CAN BE BASED ON THE EARLIER JUSTIFICATION, PLUS THE ARGUMENTS ADVANCED IN THIS MESSAGE. THE SEVEN FISHING BOATS HAVING BEEN RELEASED, EMBASSY STRONGLY RECOMMENDS, FOR THE REASONS GIVEN IN PARAGRAPH 9, THAT WE NOW MOVE AHEAD ON FMS.
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